IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6164 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIYALBHAI PURSHOTTAMBHAI & 11 - Petitioner(s)

Versus

USMANBHAI MORADBHAI & 7 - Respondent(s)

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Appearance :

MR RR MARSHALL for Petitioner(s) : 1 - 12.
MR PJ VYAS for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 4, 8,
NOTICE UNSERVED for Respondent(s) : 5 - 7.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the

Secretary (Appeals), Revenue Department, State of Gujarat dated 29.8.84 passed in Revision Application No. SRD/LND/B/81/84 in quashing and setting aside the Non-agricultural Use Permission granted by the Taluka Development Officer, Mangrol dated 4.11.82 granted in favour of the original land owner i.e. Usmanbhai Murabhai with respect to the land bearing Block No.84 admeasuring 22,477 sq. mts. of land situated at village Mota Borsara, Taluka Mangrol.

2. It is required to be noted that the very order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 29.8.84 came to be challenged by the original land owner Usmanbhai Murabhai i.e. respondent No.1 herein before this Court by way of Special Civil Application No.4453/86 and the learned Single Judge of this Court (Coram: Hon'ble Mr. Justice M.S.Shah, J.) by its judgment and order dated 17.4.2002 has dismissed the said Special Civil Application on merits confirming the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 29.8.84 passed in aforesaid Revision Application No. SRD/LND/B/81/84 in quashing and setting aside the Non-agricultural Use Permission granted by the Taluka Development Officer,

Mangrol dated 4.11.82 which is now challenged by the present petitioners by way of the present Special Civil Application and the said order has become final. It is also required to be noted that so far as the petitioners are concerned, the petitioners claim to have purchased the land in question by registered sale-deed after the impugned order came to be passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 29.8.84 and therefore, when the Non-agricultural Use Permission was quashed and set aside by the Secretary (Appeals), Revenue Department, State of Gujarat, the petitioners could not have purchased the aforesaid land in question. This Court, at present, is not required to consider the aforesaid aspect however, the fact remains that the petitioners have purchased the aforesaid land in question after the impugned order came to be passed and after the Non-agricultural Use Permission granted by the Taluka Development Officer, Mangrol was quashed and set aside. Therefore, at the time when the Secretary (Appeals), Revenue Department, State of Gujarat passed the impugned order cancelling Non-agricultural Use Permission granted by the Taluka Development Officer, Mangrol even the petitioners had no right, title or

interest in the land in question as they have purchased the land in question subsequently and therefore, as such it is not open for the petitioners to challenge the impugned order passed by the Taluka Development Officer, Mangrol. Even otherwise, as stated above the very impugned order passed by the Secretary (Appeals), Revenue Department, State of Gujarat quashing and setting aside the Non-agricultural Use Permission has been confirmed by this Court on merits in Special Civil Application No.4453/86.

3. It is the contention on behalf of the petitioners that as the respondent No.1 herein-original land owner did not remain present in the proceedings of the aforesaid Special Civil Application, this Court passed the order which is not binding to the petitioners as there was no proper representation by them. Be that it may the fact remains that this Court vide judgment and order dated 17.4.2002 has dismissed the said Special Civil Application No.4453/86 on merits and has confirmed the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 29.8.84 on merits and therefore, the present Special Civil Application also have the same fate. In fact, as stated above, the

petitioners have no locus to challenge the impugned order passed by the Secretary (Appeals), Revenue Department, State of Gujarat as at the time when the Secretary (Appeals), Revenue Department, State of Gujarat passed the impugned order, the petitioners were having no right, title or interest in the land in question and prima-facie, it appears that once the Non-agricultural Use Permission was quashed and set aside, the petitioners could not have purchased the land in question.

4. Shri R.R.Marshall, learned advocate appearing on behalf of the petitioners has submitted that the Non-agricultural Use Permission was granted by the Taluka Development Officer, Mangrol on 4.11.82 and the said order was taken under suo-motu revision by the Secretary (Appeals), Revenue Department, State of Gujarat after a period of 2 years i.e. in the year 1984 and therefore, it was after unreasonable period. As stated above, the petitioners cannot make the aforesaid grievance as the petitioners in fact had purchased the land in question subsequently after the impugned order. Even otherwise, as stated above the very impugned order is confirmed by the learned Single Judge of this Court

in the aforesaid Special Civil Application No.4453/86 on merits, which was filed by the respondent No.1-original land owner after the Non-agricultural Use Permission was granted and the said order has become final.

5.Shri R.R.Marshall, learned advocate appearing on behalf of the petitioners has submitted that after 20 years of the impugned order it is not possible now to let this land become agricultural land and instead of converting it into agricultural land, it should be continued as Non-agricultural Land. It is required to be noted that the aforesaid situation has arisen and it is continued as a Non-agricultural Use land only pursuant to the interim order passed by this Court and merely because, it has taken 20 years in disposing of the present Special Civil Application some benefits should not go in favour of the petitioners as it is a cardinal principle of law that nobody can get an advantage of the interim relief. Alternatively, it is prayed that the petitioners may be permitted to move an appropriate application afresh for Non-agricultural Use Permission. It goes without saying that it is always open for the petitioners to move an appropriate application for Non-

agricultural Use Permission before the Competent Authority/Appropriate Authority and the same can be dealt with in accordance with law and on merits and the dismissal of the present Special Civil Application will never come in the way of the petitioners in moving an appropriate application afresh before the Competent Authority/Appropriate Authority.

6. For the reasons stated above and as per the above observation, the present Special Civil Application is dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.